

# MAINE STATE LEGISLATURE

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# 118th MAINE LEGISLATURE

## FIRST SPECIAL SESSION-1997

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Legislative Document

No. 1729

S.P. 572

In Senate, April 1, 1997

**An Act to Require Health-care Providers to Honor Do Not Resuscitate Orders.**

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Reference to the Committee on Judiciary suggested and ordered printed.

A handwritten signature in cursive script that reads "Joy J. O'Brien".

JOY J. O'BRIEN  
Secretary of the Senate

Presented by Senator GOLDTHWAIT of Hancock.  
Cosponsored by Representative TUTTLE of Sanford and  
Representatives: BROOKS of Winterport, BUMPS of China.

Be it enacted by the People of the State of Maine as follows:

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Sec. 1. 18-A MRSA Article V, Part 8, as enacted, is repealed.

Sec. 2. 18-A MRSA Article V, Part 9 is enacted to read:

PART 9

DO NOT RESUSCITATE ACT

§5-901. Short title

This Part may be known and cited as the "Do Not Resuscitate Act."

§5-902. Definitions

As used in this Part, unless the context otherwise indicates, the following terms have the following meanings.

(a) "Attending physician" means the physician selected by or assigned to the person who has primary responsibility for treatment or care of the person and who is a licensed physician. If more than one physician shares that responsibility, any of those physicians may act as the attending physician under the provisions of this Part.

(b) "Cardiopulmonary resuscitation" means those measures used to restore or support cardiac or respiratory function in the event of a cardiac or respiratory rest.

(c) "Do not resuscitate identification" means a standardized identification necklace, bracelet or card as set forth in this Part that signifies that a do not resuscitate order has been issued for a person.

(d) "Do not resuscitate order" means an order issued by a licensed physician that cardiopulmonary resuscitation should not be administered to a particular person.

(e) "Emergency medical services personnel" means paid or volunteer firefighters, law enforcement officers, emergency medical technicians, paramedics or other emergency services personnel, providers or entities acting within the usual course of their professions.

(f) "Health-care decision" means a decision to give, withhold or withdraw informed consent to any type of health care, including, but not limited to, medical and surgical treatments,

2 including life-prolonging interventions, nursing care,  
3 hospitalization, treatment in a nursing home or other long-term  
4 care facility or home health care or a decision to give, withhold  
5 or withdraw informed consent to the gift or donation of a body  
6 organ or tissue.

7 (g) "Health-care facility" means a facility established to  
8 administer and provide health-care services, including, but not  
9 limited to, hospitals, medical centers, ambulatory health-care  
10 facilities, physicians' offices and clinics and extended-care  
11 facilities operated in connection with hospitals, nursing homes  
12 and rehabilitation centers.

13 (h) "Health-care provider" means any physician, dentist,  
14 nurse, paramedic, psychologist or other person providing medical,  
15 dental, nursing, psychological or other health-care services of  
16 any kind.

17 (i) "Home" means any place of residence other than a  
18 health-care facility and includes residential care facilities,  
19 assisted living programs, congregate housing and boarding homes.

20 (j) "Incapacity" means the inability because of physical or  
21 mental impairment to appreciate the nature and implications of a  
22 health-care decision, to make an informed choice regarding the  
23 alternatives presented and to communicate that choice in an  
24 unambiguous manner.

25 (k) "Representative" means a person designated by a  
26 principal to make health-care decisions in accordance with  
27 section 5-506.

28 (l) "Surrogate decision maker" means a person over 18 years  
29 of age with mental capacity who is reasonably available and  
30 willing to make health-care decisions on behalf of an  
31 incapacitated person and is identified by the attending physician  
32 in accordance with applicable provisions of this Part as the  
33 person who is to make decisions pursuant to this Part.

34 (m) "Trauma" means blunt or penetrating bodily injuries  
35 from impact that occur in situations, including, but not limited  
36 to, motor vehicle collisions, mass casualty incidents and  
37 industrial accidents.

38 **§5-903. Applicability**

39 This Part applies to a person regardless of whether or not  
40 that person has completed a durable health care power of  
41 attorney. For the purposes of direction to emergency medical  
42 services personnel, a do not resuscitate order does not apply to  
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2 treatment rendered at the site where trauma has occurred to a  
3 person who experiences a cardiac or respiratory arrest as the  
4 result of severe trauma.

6 **§5-904. Presumed consent to cardiopulmonary resuscitation;**  
7 **health-care facilities not required to expand to provide**  
8 **cardiopulmonary resuscitation**

10 (a) A person is presumed to consent to the administration  
11 of cardiopulmonary resuscitation in the event of cardiac or  
12 respiratory arrest, unless one or more of the following  
13 conditions of which the health-care provider has actual knowledge  
14 apply:

16 (1) A do not resuscitate order in accordance with the  
17 provisions of this Part has been issued for that person;

18 (2) A completed durable health care power of attorney for  
19 that person is in effect pursuant to the provisions of  
20 section 5-506 indicating that the person does not wish to  
21 receive cardiopulmonary resuscitation or the person's  
22 representative has determined that the person would not wish  
23 to receive cardiopulmonary resuscitation.

24 (b) Nothing in this Part requires a nursing home or  
25 long-term care facility operated in connection with a hospital to  
26 institute or maintain the ability to provide cardiopulmonary  
27 resuscitation or to expand its existing equipment, facilities or  
28 personnel to provide cardiopulmonary resuscitation. If a  
29 health-care facility does not provide cardiopulmonary  
30 resuscitation, this policy must be communicated in writing to the  
31 person, representative or surrogate decision maker prior to  
32 admission.

34 **§5-905. Issuance of do not resuscitate order; order to be**  
35 **written by physician**

38 (a) An attending physician may issue a do not resuscitate  
39 order for a person who is present in or residing at home or in a  
40 health-care facility, provided that the person, representative or  
41 surrogate decision maker has consented to the order. A do not  
42 resuscitate order must be issued in writing in the form as  
43 described in this section for a person not present or residing in  
44 a health-care facility. For a person present in a health-care  
45 facility, a do not resuscitate order must be issued in accordance  
46 with the policies and procedures of the health-care facility or  
47 in accordance with the provisions of this Part.

48 (b) A person may request that person's physician to issue a  
49 do not resuscitate order.



2           Address.....  
          Person's Signature.....  
4           Address.....  
          Surrogate decision maker's Signature.....  
          Address.....

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8           **§5-906. Compliance with do not resuscitate order**

(a) Health care-providers must comply with a do not resuscitate order when presented with:

12           (1) A do not resuscitate order completed by a physician on a form as specified in section 5-905;

14           (2) A do not resuscitate identification as set forth in section 5-912; or

16           (3) A do not resuscitate order for a person present or residing in a health-care facility issued in accordance with the health-care facility's policies and procedures.

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22           **§5-907. Revocation of do not resuscitate order**

24           (a) At any time, a person in a health-care facility may revoke that person's previous request for or consent to a do not resuscitate order by making a written, oral or other act of communication to a physician or other professional staff member of the health-care facility.

26           (b) At any time, a person residing at home may revoke that person's do not resuscitate order by destroying the order and removing the do not resuscitate identification the person is wearing or carrying. The person is responsible for notifying the person's physician of the revocation.

28           (c) A representative or surrogate decision maker may revoke consent to a do not resuscitate order for an incapacitated person in a health-care facility by written notification to a physician or other professional staff member of the health-care facility of the revocation of consent or by orally notifying the attending physician in the presence of a witness 18 years of age or older.

30           (d) At any time, a representative or surrogate decision maker may revoke consent for an incapacitated person residing at home by removing the do not resuscitate identification from the person. The representative or surrogate decision maker is responsible for notifying the person's physician of the revocation.

2           (e) The attending physician who is informed of or provided  
3 with a revocation of consent pursuant to this section shall  
4 immediately cancel the do not resuscitate order if the person is  
5 in a health-care facility and notify the professional staff  
6 member of the health-care facility responsible for the person's  
7 care of the revocation and cancellation. Any professional staff  
8 of the health-care facility who is informed of or provided with a  
9 revocation of consent pursuant to this section shall immediately  
10 notify the attending physician of the revocation. Only a  
11 licensed physician may cancel the issuance of a do not  
12 resuscitate order.

13           **§5-908. Protection of person carrying out in good faith do not**  
14 **resuscitate order; notification of representative or**  
15 **surrogate decision maker by physician refusing to comply**  
16 **with do not resuscitate order**

17           (a) A health care-provider, health-care facility or  
18 individual employed by, acting as the agent of or under contract  
19 with any of the foregoing is not subject to criminal prosecution  
20 or civil liability for carrying out in good faith a do not  
21 resuscitate order authorized by this Part on behalf of a person  
22 as instructed by the person, representative or surrogate decision  
23 maker or for those actions taken in compliance with the standards  
24 and procedures set forth in this Part.

25           (b) A health care-provider, health-care facility,  
26 individual employed by, acting as agent of, or under contract  
27 with any of the foregoing or other individual who witnesses a  
28 cardiac or respiratory arrest is not subject to criminal  
29 prosecution or civil liability for providing cardiopulmonary  
30 resuscitation to a person for whom a do not resuscitate order has  
31 been issued, as long as that physician or individual:

32           (1) Reasonably and in good faith was unaware of the  
33 issuance of a do not resuscitate order; or

34           (2) Reasonably and in good faith believed that consent to  
35 the do not resuscitate order had been revoked or canceled.

36           (c) If a person requests a do not resuscitate order and a  
37 physician refuses to issue that order or to comply with a do not  
38 resuscitate order entered pursuant to this Part, the physician  
39 shall take reasonable steps to advise promptly the person,  
40 representative or surrogate decision maker of the person that the  
41 physician is unwilling to effectuate the order. The attending  
42 physician, at the election of the person, representative or  
43 surrogate decision maker shall permit the person, representative  
44 or surrogate decision maker to obtain another physician.

2 **§5-909. Insurance**

4 A policy of life insurance may not be legally impaired,  
6 modified or invalidated in any manner by the issuance of a do not  
8 resuscitate order notwithstanding any term of the policy to the  
10 contrary.

12 A person may not prohibit or require the issuance of a do  
14 not resuscitate order for an individual as a condition of that  
16 individual's being insured or receiving health-care services.

18 **§5-910. Interinstitutional transfers**

20 If a person with a do not resuscitate order is transferred  
22 from one health-care facility to another health-care facility,  
24 the existence of a do not resuscitate order must be communicated  
26 to the receiving facility prior to the transfer, and the written  
28 do not resuscitate order must accompany the person to the  
30 health-care facility receiving the person and remains effective  
32 until a physician at the receiving facility issues admission  
34 orders.

36 **§5-911. Preservation of existing rights**

38 Nothing in this Part impairs or supersedes any legal right  
40 or legal responsibility that any person may have to effect the  
42 withholding of cardiopulmonary resuscitation in any lawful manner.

44 Nothing in this Part may be construed to preclude a court of  
46 competent jurisdiction from approving the issuance of a do not  
48 resuscitate order under circumstances other than those under  
50 which such an order may be issued pursuant to this Part.

52 **§5-912. Do not resuscitate order form; do not resuscitate**  
54 **identification; public education**

56 (a) The Commissioner of Human Services, no later than one  
58 year after the passage of this Part, shall implement the  
60 statewide distribution of do not resuscitate forms as described  
62 in section §5-905.

64 (b) Do not resuscitate identification must consist of  
66 either a medical condition bracelet or necklace with the  
68 inscription of the patient's name, date of birth in numerical  
70 form, and "ME do not resuscitate" on it. No other identification  
72 or wording may be considered to comply with the provisions of  
74 this subsection. Such identification may be issued only upon  
76 presentation of a properly executed do not resuscitate order form  
78 as set forth in section 5-905 or a do not resuscitate order

2 properly executed in accordance with a health-care facility's  
3 written policy and procedure.

4 (c) The Commissioner of Human Services, no later than one  
5 year after the effective date of this Part, shall establish a  
6 system for the distribution of the do not resuscitate  
7 identification bracelets and necklaces.

8  
9 (d) The Commissioner of Human Services, no later than one  
10 year after the effective date of this Part, shall develop and  
11 implement a statewide educational effort to inform the public of  
12 their right to accept or refuse cardiopulmonary resuscitation and  
13 to request their physician to write a do not resuscitate order  
14 for them.

15 **§5-913. Not suicide or murder**

16  
17 The withholding of cardiopulmonary resuscitation from a  
18 person in accordance with the provisions of this Part does not,  
19 for any purpose, constitute suicide or murder. The withholding  
20 of cardiopulmonary resuscitation from a person in accordance with  
21 the provisions of this Part, does not relieve any individual of  
22 responsibility for any criminal acts that may have caused the  
23 person's condition. Nothing in this Part may be construed to  
24 legalize, condone, authorize or approve mercy killing or assisted  
25 suicide.

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27 **§5-914. Full faith and credit**

28  
29 It is the intention of the Legislature to recognize that  
30 existence of do not resuscitate identification correctly  
31 expresses the will of any person who bears it and that courts in  
32 other states or contries recognize this expression and give full  
33 faith and credit to do not resuscitate identification.

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35 **Sec. 3. 29-A MRS §1403**, as amended by PL 1995, c. 378, Pt.  
36 B, §5, is further amended to read:

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38 **§1403. Do not resuscitate order**

39  
40 Subject to available funding, the Secretary of State shall  
41 make advance-health-care-directive do not resuscitate order forms  
42 available in offices of the Bureau of Motor Vehicles. The form  
43 must be in substantially the form provided in Title 18-A, section  
44 5-804-and 5-905 with the addition of the following information at  
45 the end: "Completion of this form is optional."

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## SUMMARY

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This bill repeals the existing law governing advanced health-care directives and enacts instead a new Part concerning "do not resuscitate" orders or "DNR" orders. This bill does the following.

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1. It allows attending physicians to issue DNR orders that are applicable in health-care facilities, homes, communities and ambulances within the State. Under this bill, the attending physician may issue a DNR order at the request of the patient or the patient's surrogate decision maker, or for a patient who lacks decision-making capacity, in the absence of a surrogate decision maker, with the concurrence of a 2nd physician who agrees that the performance of cardiopulmonary resuscitation or "CPR" would be contrary to accepted medical standards.

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2. It allows attending physicians to issue DNR orders for inpatients and outpatients. For inpatients, the physician must write the DNR order according to the policy of the health-care facility. For outpatients, the physician must complete a do not resuscitate order card.

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3. Patients who have been issued a do not resuscitate order card must be provided with information on how to purchase a do not resuscitate identification necklace or bracelet that complies with the requirements of this bill.

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4. It presumes consent for the administration of CPR in the event of cardiac or respiratory arrest for each patient unless one or more of the following conditions apply:

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A. A DNR order in accordance with the provisions of the law has been issued for the patient; or

B. A completed durable health care power of attorney for the patient is in effect in which the patient indicated that he or she would not want CPR or his or her representative named in the durable health care power of attorney has determined that the patient would not want to receive CPR.

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5. It provides immunity from criminal prosecution or civil liability for physicians and other health-care providers who honor in good faith a patient's DNR order authorized in accordance with the provisions of this bill. Furthermore, the law allows a physician to refuse to issue a DNR order as a matter of conscience and requires such physician to advise the patient or representative that he or she is unwilling to issue the

2 order. In such circumstances, the physician must permit the  
patient to obtain another physician.

4 6. It requires that the Department of Human Services  
6 develop and implement a statewide educational effort to inform  
the public about the right to request their physician to issue a  
DNR order for them.